

August 3, 2019

MEMORANDUM

To: Planning, Land Use and Zoning Committee
From: Lish Whitson, Council Central Staff
Subject: State Environmental Policy Act (SEPA) reform (Council Bill 119600)

On Wednesday, August 7, 2019, the Planning, Land Use and Zoning Committee (PLUZ) will receive a briefing on [Council Bill 119600](#), which would make changes to the City's regulations regarding the State Environmental Policy Act (SEPA). In April, the Washington State Legislature passed [Engrossed 2nd Substitute House Bill \(E2SHB\) 1923](#), which exempts specified planning activities from SEPA appeals. For these exemptions to take effect, the City's SEPA regulations (Seattle Municipal Code (SMC) Chapter [25.05](#)) must be made consistent with the new law.

As the Council considers changes to SEPA regulations to incorporate the provisions of E2SHB 1923, there is an opportunity for the Council to consider additional changes to (1) further conform with State Law, (2) provide clarity regarding the length of appeals to the City's Hearing Examiner, and (3) provide for consistency of environmental analysis.

This memorandum describes:

- (1) Relevant components of SEPA,
- (2) Changes to Washington State SEPA regulations that have not yet been incorporated into the City's regulations, and
- (3) Other improvements to the City's SEPA process consistent with [SMC 25.05.030](#) to "Find ways to make the SEPA process more useful to decision makers and the public; promote certainty regarding the requirements of the act; reduce paperwork and the accumulation of extraneous background data; and emphasize important environmental impacts and alternatives...".

Background

Washington State's SEPA regulations¹ require review of proposed governmental actions to identify the potential for significant adverse environmental impacts. The goal of SEPA analysis is to provide information to decision-makers regarding the potential environmental impacts of the proposals that they review. The City's SEPA regulations in SMC 25.05 augment and interpret the State's regulations. Many State SEPA regulations are incorporated by reference. Where the City provides more specific or stringent requirements, those stricter requirements apply.

The first step in environmental review is to determine whether a proposed governmental action is subject to SEPA. WAC [197-11-800](#) contains a broad list of actions that are categorically

¹ Washington State's SEPA regulations are contained in RCW [Chapter 43.21C](#) and WAC [Chapter 197-11](#).

[exempt](#) from SEPA review. These exemptions are repeated in SMC [25.05.800](#). Additional exemptions are listed in RCW 43.21C, but not all exemptions listed in the WAC and RCW are carried forward into the City's SEPA regulations. If the State allows an exemption, but it is not clearly exempt by the SMC, the action is not exempt from City SEPA review. For these exemptions to apply in Seattle, the SMC needs to be amended to explicitly incorporate them.

For projects that are not exempt from SEPA, SEPA rules require the completion of a [SEPA Checklist](#) to identify whether there is the possibility of significant adverse impacts from a proposal. The SEPA regulations identify the specific areas of the environment that must be reviewed for possible significant impacts. Analysis of other issues is permitted but not required.

A lead agency² reviews the checklist and issues a threshold determination. If the lead agency identifies the possibility of significant adverse impacts, a Determination of Significance (DS) is issued and an Environmental Impact Statement (EIS) must be prepared. If there is not a likelihood of significant adverse impacts, or if significant adverse impacts can be mitigated, the lead agency issues a Determination of Nonsignificance (DNS), and the environmental review is considered finished.

After the publication of the DNS or Final EIS, anyone affected by the proposed action may appeal the lead agency's decision. That appeal is considered by the Seattle Hearing Examiner, who – after a hearing on the determination – must decide “to affirm or reverse the administrative decisions..., to remand cases to the appropriate department with directions for further proceedings, and to grant other appropriate relief in the circumstances.” (SMC [25.05.680](#) B.3.)

Over the last ten years, the Hearing Examiner has received 58 appeals of SEPA decisions. Out of these 58 appeals, the lead agency's decision was affirmed 44 times. SEPA appeal hearings have ranged from 33 days to 392 days (see Attachment 1). The shortest appeal process was regarding a DNS for development of a single building with one appellant where only one issue was raised. The longest appeal process was for the EIS for the Mandatory Housing Affordability legislation, which included multiple appellants who raised concerns regarding most SEPA issues. The average length of an appeal has been 124 days. The median length of an appeal has been 104 days.

Recent changes to the Revised Code of Washington

The Washington State Legislature recently passed two laws regarding SEPA that are not currently reflected in the City's SEPA statute. In 2012, the state passed [Senate Bill \(SB\) 6406](#), which exempts certain [nonproject](#) actions from SEPA review if an action is consistent with the City's Comprehensive Plan or likely to improve the environment. In addition, it allows the City

² The lead agency is the agency with main responsibility for complying with SEPA's requirements. It is generally either the lead proponent of a City project, or the lead reviewer of an application for City approval.

to exempt development that is consistent with the City's Comprehensive Plan from SEPA review. In 2019, the State passed E2SHB 1923, which exempts the environmental review of some nonproject actions from SEPA appeals.

SB 6406 (2012)

In 2012, SB 6406 added a new section to RCW 43.21C, the State's SEPA statute. This section [43.21C.450](#) exempts the following nonproject actions from SEPA:

1. Amendments to development regulations to ensure consistency with the City's adopted Comprehensive Plan;
2. Amendments to development regulations to ensure consistency with the City's shoreline master program;
3. Amendments to development regulations that will provide increased environmental protection, limited to the following:
 - a. Increased protections for critical areas;
 - b. Increased vegetation retention or decreased impervious surface areas in shoreline areas;
 - c. Increased vegetation or decreased impervious surface in critical areas;
4. Amendments to technical codes to ensure consistency with minimum standards in State Law.

SB 6406 also amended [RCW 43.21C.229](#) in order to support infill development pursuant to Comprehensive Plans. RCW 43.21C.229 allows the City to exempt development from SEPA review if the "current density and intensity of use in the area is lower than called for in the goals and policies of the... comprehensive plan". In 2017, the Council adopted [Ordinance 125287](#), which applied these exemptions in Urban Centers for:

1. Residential buildings with 200 or fewer units,
2. Commercial space up to 12,000 square feet in a stand-alone commercial structure, or
3. Commercial space up to 30,000 square feet in a mixed-use development.

The Council decided to delay adoption of these provisions in urban villages until after the Council's review of the Mandatory Housing Affordability legislation. Applying these exemptions to urban villages was a recommendation of the Housing Affordability and Livability Agenda.

Under RCW 43.21C.229, the City can choose to apply this statute when:

1. Residential, mixed-use or commercial development is planned for an area where the current density and intensity of use in the area is lower than called for in the Comprehensive Plan.
2. The City can show that specific impacts of development are adequately addressed by the City's development regulations or other applicable laws.

3. The Comprehensive Plan was subject to environmental review.

Attachment 2 to this memo provides an inventory of environmental protections in the codes and rules compared to a full list of topics addressed by environmental review pursuant to the SEPA. The City's Comprehensive Plan was reviewed under a [Final Environmental Impact Statement](#). The Comprehensive Plan provides estimates of residential and employment growth in Urban Centers and Hub Urban Villages and estimates of residential growth in Residential Urban Villages. Attachment 3 provides the most recent available data regarding current and planned development compared to these estimates.

E2SHB 1923 (2019)

E2SHB 1923 was adopted this past spring and went into effect on July 28, 2019. It exempts the following types of governmental actions from SEPA appeals if acted on by the City by April 1, 2021:

1. Upzoning 500+ acres that include a commuter or light rail station;
2. Upzoning 250+ acres with frequent transit service;
3. Allowing duplexes, triplexes and courtyard apartments in single-family zoned lots;
4. Allowing ADUs in single-family zones on lots that meet size requirements;
5. Adopting a subarea plan;
6. Adopting a planned action ordinance (like Yesler Terrace);
7. Increasing categorical exemptions that encourage urban infill development;
8. Adopting a form-based code;
9. Allowing duplexes on each corner lot within all single-family zoned areas; and
10. Allowing for subdivision of lots into smaller parcels.

In addition, HB 1923 eliminates appeals based on transportation impacts for residential and mixed-use projects that are consistent with adopted transportation plans. This only applies if traffic or parking impact fees are imposed or traffic or parking impacts are expressly mitigated by the City's ordinances.

If the City decides to adopt these provisions into the SMC, environmental review will be required for these types of proposals, but no appeals would be permitted.

Other issues related to the City's SEPA Regulations

Over the years, the City has identified several other issues with the City's SEPA regulations relating to the SEPA process and appeals. These include:

1. Contradictory direction regarding when permits should be issued after an appeal, with clear direction in SMC [Section 23.76.028](#), and confusing direction provided in [SMC Section 25.05.070.E](#).

2. Lack of clarity regarding whether analysis of non-environmental issues are subject to appeal if they are analyzed in an EIS (even though not required to be analyzed under Washington State Law ([SMC 25.05.440.G](#))).
3. Interpretations that the City's regulations regarding analysis of social, cultural and economic issues require analysis of potential economic impacts of a proposal on particular businesses affected by the proposal ([SMC 25.05.440.E](#)).
4. Lack of specific direction regarding how to analyze impacts pursuant to the City's SEPA policies. Other jurisdictions, such as the [City of New York](#), provide detailed directions on how to analyze each element of the environment, providing clarity and consistency of environmental analysis across project and nonproject actions.
5. Lack of clarity regarding whether the Legislative Department can act as a lead agency for an environmental review.
6. Lack of clarity in the code regarding when appeal hearings will occur and the length of time that the appeal process will take.

Council Bill 119600

Council Bill 119600 would make several changes to the City's SEPA regulations (Chapter 25.05) to align the City's SEPA regulations with the recent changes to State Law described above. The bill would also provide more predictability regarding timelines for Hearing Examiner appeals, encourage consistency in the content of environmental documents, and clarify or delete confusing or conflicting sections of the City's SEPA regulations. Key changes in the bill include:

- Incorporation of SEPA exemptions for nonproject actions under RCW 43.21C.450;
- Incorporation of SEPA exemptions for multifamily, mixed use and commercial development in urban villages up to the limits currently provided for urban centers under RCW 43.21C.229;
- Incorporation of the waivers of appeals allowed under E2SHB 1923 (2019);³
- A time limit on the length of SEPA appeals in front of the Hearing Examiner, limiting appeals to 120 days, 150 days with notice to all parties, or longer if all parties agree;
- Permission for the Director of the Seattle Department of Construction and Inspections (SDCI) to promulgate rules to provide uniform standards for preparing environmental documents;
- Clarification that additional non-environmental analysis of economic issues, when included in an environmental document, is not subject to appeal;
- Clarification that analysis of the potential economic impacts related to individual businesses is not required under SEPA; and
- Clarification that the Legislative Department may act as lead agency or may delegate lead agency status to another City agency, at its discretion.

³ At the time of this memo, E2SHB 1923 has not yet been codified, but is likely to be codified by September 2019. If approved, the bill will need to be amended to include references to the new sections of the RCW adopted by E2SHB 1923.

Next Steps

Following the August 7 discussion of Council Bill 119600, the PLUZ Committee will continue its discussion of this Bill at its September 4 meeting and will hold a public hearing on September 9 at 5:30 in the Seattle City Council Chambers. A vote in committee could occur as early as September 11. Because State Law requires a 60-day comment period, the earliest the City Council can vote on this legislation is October 7.

Attachments:

1. Number of days between the filing of a SEPA appeal and the Hearing Examiner's decision on the appeal
2. Summary of environmental protections in other codes/rules compared to a full list of topics addressed by environmental review pursuant to the SEPA
3. Urban Center and Village Growth compared to Comprehensive Plan estimates

cc: Kirstan Arestad, Central Staff Director
Aly Pennucci, Supervising Analyst

Number of days between the filing of a SEPA appeal and the Hearing Examiner's decision on the appeal



Summary of environmental protections in other codes/rules compared to a full list of topics addressed by environmental review pursuant to the SEPA

SEPA Authority by Element of the Environment (from 25.05.675)	How Addressed by Other Codes/Rules*
Air Quality	<ul style="list-style-type: none"> • Regional air quality oversight addresses policies and rules on air quality attainment status on a neighborhood or sub-area basis. Additional authority provided by Puget Sound Clean Air Agency (PSCAA), Environmental Protection Agency, Clean Air Act, and the state Department of Ecology.
Construction Impacts - Air Quality	<ul style="list-style-type: none"> • Building code contains provisions for the removal of hazardous and combustible materials (Section 3303). • PSCAA rules and best practices apply to mitigate impacts from fugitive dust and other potentially hazardous demolition waste materials, such as lead. • PSCAA permit required for asbestos removal and includes survey and mitigation measures for dust control techniques and use of toxic air control technologies.
Construction Impacts – Noise	<ul style="list-style-type: none"> • Noise Code sets a limit of 7 PM on noisy work in most zones in or near residential areas (25.08.425), includes LR, MR, HR, NC, RC zones. • Noise Code includes daytime/nighttime noise level limits (25.08.410-425) • Major Public Project Construction Noise Variance (25.08.655)
Construction Impacts – Parking/Traffic/Streets/ Pedestrian Safety	<ul style="list-style-type: none"> • Street Use and Traffic Codes (Titles 15 & 11) contain authority to regulate: <ul style="list-style-type: none"> ○ Pedestrian safety measures, ○ Street and sidewalk closures, ○ Truck traffic timing and haul routes, ○ Any planned use of the street for construction purposes (material, equipment storage). • Land Use Code (23.42.044) includes authority to manage construction-related parking.
Earth/Environmentally Critical Areas /Water Quality/Drainage/Plants and Animals	<ul style="list-style-type: none"> • Environmentally Critical Area Code includes mitigation for landslide hazards, steep slopes, unstable soils, wetlands, flood prone and fish/wildlife habitat areas (25.09). Consistent with RCW Ch. 36.70A and WAC Ch. 365-190

SEPA Authority by Element of the Environment (from 25.05.675)	How Addressed by Other Codes/Rules*
	<p>guidance (also ref: Wash. Dept. of Commerce 2018 Critical Areas Handbook).</p> <ul style="list-style-type: none"> • In addition, the Stormwater, Grading & Drainage ordinances and Shoreline regulations (Chapter 23.60A) include environmental & water quality protections, to meet applicable State guidance that includes: the 2019 Stormwater Management Manual for Western Washington, and State Shoreline Master Program guidelines (WAC 173-26).
Energy	<ul style="list-style-type: none"> • Energy Codes required by the City and the State mandate high levels of energy efficiency. • City Light utility system improvements, if any, are required to provide service to new development. This can include local improvements and at distances from sites if the needs warrant such improvements. • Various City policies, programs and rules address energy conservation and efficient building designs (LEED; Energy Star).
Environmental Health	<ul style="list-style-type: none"> • Federal, state and regional regulations are the primary means of mitigating risks associated with hazardous and toxic materials. • Regulations for telecommunications facilities in the Land Use Code also apply within this category.
<p>Housing</p> <p><i>SEPA authority is narrowly defined: “Compliance with legally valid City ordinance provisions relating to housing relocation, demolition and conversion shall constitute compliance with this [SEPA] housing policy.” SMC 25.05.675.I.2.c.</i></p>	<ul style="list-style-type: none"> • Land Use, housing and building maintenance, and other codes include provisions to encourage housing preservation, especially for low-income persons; as well as tenant relocation assistance, and incentives for affordable housing. • Low-income housing preservation is a high-priority for City public projects and programs, per SEPA policy (25.05.675.I.1.b.4). • “Mandatory Housing Affordability” affordable housing impact mitigation programs for commercial and residential development (Chapters 23.58B and 23.58C)
Historic Preservation/Archaeological Sites	<ul style="list-style-type: none"> • Landmarks Preservation Ordinance remains in place for landmark preservation (Chapter 25.12) • Existing policy/practices are in place for SDCI to refer permit applicants to the Historic

SEPA Authority by Element of the Environment (from 25.05.675)	How Addressed by Other Codes/Rules*
	<p>Preservation Office for potential survey and landmark nomination.</p> <ul style="list-style-type: none"> • SDCI Director’s Rule 2-98: Clarification of State Environmental Policy Act (SEPA) Historic Preservation Policy for potential archaeologically significant sites and requirements for archeological assessments • Federal and state regulations address protection of cultural/archaeological resources (including RCW Chapters 27.34, 27.53, 27.44, 79.01 and 79.90 RCW; and WAC Chapter 25.48).
Land Use/Height, Bulk & Scale/Shadows on Open Spaces	<p>Design Review process applies at various thresholds and provide the venue for addressing these topics (Chapter 23.41). With recent adjustments, Design Review now applies to a greater range of locations and developments, which may depend on surrounding property context.</p> <ul style="list-style-type: none"> • Land Use Code development standards address the scale of development and other aspects related to compatibility.
Light and Glare	<ul style="list-style-type: none"> • Land Use Code screening and landscaping, lighting directional/shielding standards provide mitigation. • Design Review can address this topic as well.
Noise	<ul style="list-style-type: none"> • Noise Control Code provides for daytime and nighttime noise limits, and authority to mitigate impacts related to exceeding noise level limits and specific noise generating activities.
<p>Parking</p> <p><i>The policies apply only to areas outside of urban centers, the station area overlay district, and portions of urban villages within 1,320 feet walking distance of frequent transit service.</i></p>	<p>Inside the areas mentioned no parking is required and in addition:</p> <ul style="list-style-type: none"> • City policy promotes transit, bike, pedestrian, car-share, bicycle-share and other mobility-choice options, as impact mitigation; • The City and region fund transit service; • The State Commute trip reduction requires transportation management plans for major employers; • Flexible-use parking rules encourage greater efficiency in the use of existing parking resources, and more shared parking among multiple users.

SEPA Authority by Element of the Environment (from 25.05.675)	How Addressed by Other Codes/Rules*
Public Services and Facilities	<ul style="list-style-type: none"> • Authority for requiring utility improvements is identified in rules, codes and policies and are applied during permitting reviews. This includes water, sewer, storm drain and electrical system improvements. • Permit applications are referred for other departments for input, if facilities or services might be affected, such as police or fire protection. • Public service and utility impact analyses to address growth impacts are addressed through area planning initiatives in conjunction with supporting area-wide SEPA reviews, as is done for subarea rezones.
<p>Public View Protection</p> <p><i>Applies to public views from designated public viewpoints, parks, scenic routes and view corridors to features such as mountains, skyline & water. Does not apply to views from private property.</i></p>	<ul style="list-style-type: none"> • Design Review can address individual development view impact consideration and mitigation. • View considerations, such as along specific streets, are commonly addressed during area planning and rezoning efforts. Commonly used approaches include height limits and upper-level setbacks incorporated into new zoning.
Traffic and Transportation	<ul style="list-style-type: none"> • Land Use Code requires transportation study & mitigation (Chapter 23.52) for certain sized projects no longer subject to SEPA. • Per Section 23.52.004 citywide level-of-service standards, new development of certain size in certain locations must include action to help achieve single-occupant-vehicle reduction target, by geographic sector. • Street use permitting (15.04, 11.16) & Right of Way Improvements Manual include mitigation authority for: access point control, street/ intersection configuration, bike parking and signage.

*All citations are from the Seattle Municipal Code, unless otherwise indicated. RCW = Revised Code of Washington. WAC= Washington Administrative Code.

Attachment 3: Urban Center and Village Growth Compared to Comprehensive Plan estimates

Urban Centers/Villages	Total Units 2015 (as of year end)	Units Built* 2016 - 6/30/2019	Comprehensive Plan 20-year Estimate (2015-2035)	Growth as % of Estimate as of 6/30/2019
Downtown	24,347	5,265	12,000	43.9%
First Hill/Capitol Hill	29,619	3,887	6,000	64.8%
University District	9,802	1,249	3,500	35.7%
Northgate	4,535	249	3,000	8.3%
South Lake Union	4,536	4,990	7,500	66.5%
Uptown	7,483	703	3,000	23.4%
Urban Centers	80,322	14,603	35,000	41.7%
Ballard	9,168	1,520	4,000	38.0%
Bitter Lake Village	3,257	181	1,400	12.9%
Fremont	3,200	535	1,300	41.2%
Lake City	2,546	345	1,000	34.5%
Mt Baker	2,454	381	1,000	38.1%
West Seattle Junction	3,880	1,127	2,700	41.7%
Hub Urban Villages	24,505	3,735	10,900	34.3%
23rd & Union-Jackson	5,451	1,132	1,800	62.9%
Admiral	1,131	161	300	53.7%
Aurora-Licton Springs	3,454	262	1,000	26.2%
Columbia City	2,683	565	900	62.8%
Crown Hill	1,307	205	1,100	18.6%
Eastlake	3,829	400	800	50.0%
Green Lake	2,605	247	600	41.2%
Greenwood-Phinney Ridge	1,757	145	500	29.0%
Madison-Miller	2,781	707	800	88.4%
Morgan Junction	1,342	42	400	10.5%
North Beacon Hill	1,474	256	800	32.0%
Othello	2,836	474	1,000	47.4%
Rainier Beach	1,520	59	500	11.8%
Roosevelt	1,616	966	900	107.3%
South Park	1,292	23	400	5.8%
Upper Queen Anne	1,724	1	500	0.2%
Wallingford	3,222	127	1,000	12.7%
Westwood-Highland Park	2,150	33	600	5.5%
Residential Urban Villages	42,174	5,805	13,900	41.8%

* Built housing units are the net units (new units built minus units demolished) reported in the year the building construction permit was declared final.

** Housing units permitted are the net new units for which the building construction permit has been issued. Issued permits may be in pre-construction, under construction, or complete awaiting final inspection.

Urban Center and Village Growth Compared to Comprehensive Plan estimates

Urban Centers/Villages	Units Permitted, Not Yet Built **	Growth including Permitted Units	Growth as % of Estimate including Permitted Units as of 6/30/2019
Downtown	4,581	9,846	82.1%
First Hill/Capitol Hill	3,836	7,723	128.7%
University District	1,109	2,358	67.4%
Northgate	136	385	12.8%
South Lake Union	1,419	6,409	85.5%
Uptown	768	1,471	49.0%
Urban Centers	8,992	23,595	67.4%
Ballard	486	2,006	50.2%
Bitter Lake Village	122	303	21.6%
Fremont	223	758	58.3%
Lake City	21	366	36.6%
Mt Baker	649	1,030	103.0%
West Seattle Junction	346	1,473	54.6%
Hub Urban Villages	1,847	5,582	51.2%
23rd & Union-Jackson	881	2,013	111.8%
Admiral	112	273	91.0%
Aurora-Licton Springs	290	552	55.2%
Columbia City	491	1,056	117.3%
Crown Hill	145	350	31.8%
Eastlake	133	533	66.6%
Green Lake	155	402	67.0%
Greenwood-Phinney Ridge	321	466	93.2%
Madison-Miller	107	814	101.8%
Morgan Junction	39	81	20.3%
North Beacon Hill	165	421	52.6%
Othello	154	628	62.8%
Rainier Beach	60	119	23.8%
Roosevelt	770	1,736	192.9%
South Park	47	70	17.5%
Upper Queen Anne	7	8	1.6%
Wallingford	268	395	39.5%
Westwood-Highland Park	165	198	33.0%
Residential Urban Villages	4,310	10,115	72.8%

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Urban Center and Village Growth Compared to Comprehensive Plan estimates

Urban Centers/Villages	Total Jobs 2015	Job Change 2016-2018	Comprehensive Plan 20-year Estimate (2015-2035)	Growth as % of Estimate as of 2018
Downtown	164,267	21,858	35,000	13.3%
First Hill/Capitol Hill	43,629	2,781	3,000	6.4%
University District	47,652	-2,768	5,000	-5.8%
Northgate	12,876	-285	6,000	-2.2%
South Lake Union	38,762	23,022	15,000	59.4%
Uptown	15,483	30	2,500	0.2%
Urban Centers	322,669	44,638	66,500	13.8%
Ballard	8,381	380	4,000	4.5%
Bitter Lake Village	3,651	84	1,300	2.3%
Fremont	8,808	-893	1,300	-10.1%
Lake City	1,675	21	1,000	1.3%
Mt Baker	4,130	674	1,000	16.3%
West Seattle Junction	3,829	557	2,300	14.5%
Hub Urban Villages	30,474	821	10,900	2.7%

The comprehensive planning estimates are for all jobs minus employment in the Construction/Resources sector.

All jobs are estimated by starting with Washington State Employment Security Department Covered Employment and estimating the remaining jobs not covered by unemployment

The Comprehensive Plan does not include estimates of job growth for Residential Urban Villages